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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 TELAYA, LLC, an Idaho limited
12 liability company, and EARL E.
13 SULLIVAN, an individual,

14 Plaintiffs,

15 v.

16 CRUZ ESTATES, LLC d/b/a
17 CANON DE SOL WINERY, a
18 Washington limited liability
19 company, and VICTOR J. CRUZ and
20 KIMBERLY CRUZ, husband and
21 wife, and the marital community
22 thereof,

23 Defendants.

No. CV-13-5075-RHW
COMPLAINT FOR DAMAGES

24 Plaintiffs Telaya, LLC and Earl E. Sullivan, as their Complaint against
25 Defendants Cruz Estates, LLC d/b/a Canon de Sol Winery, Victor J. Cruz, and
26 Kimberly Cruz, allege as follows:

COMPLAINT FOR DAMAGES - 1

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I. PARTIES

1.1 Plaintiff Telaya, LLC ("Telaya") is an Idaho limited liability company with its principal place of business in Garden City, Ada County, Idaho. Telaya is in the business of selling high quality wines.

1.2 Plaintiff Earl E. Sullivan is an individual who resides in Hidden Springs, Ada County, Idaho. Mr. Sullivan is the manager and member of Telaya.

1.3. Defendant Cruz Estates, LLC d/b/a Canon de Sol Winery ("Cruz Estates") is a Washington limited liability company with its principal place of business in Benton City, Benton County, Washington. Cruz Estates is in the business of producing and selling wines.

1.3 Defendants Victor J. Cruz and Kimberly Cruz are individuals, husband and wife, who, upon information and belief, reside in Kennewick, Benton County, Washington. They are the members of Cruz Estates, and Mr. Cruz is the manager of Cruz Estates. Mr. Cruz also works as the master vintner for Cruz Estates.

II. JURISDICTION AND VENUE

1 Wines"). In exchange, Plaintiffs agreed to pay for the 2012 Vintage Wines,
2 reimburse Defendants for expenses related to production of the 2012 Vintage
3 Wines, and pay Defendants a "consulting fee" of \$65 per case of wine. A copy of
4 the 2012 Contract is attached to this Complaint as **Exhibit B**.

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6 3.3 Between approximately June 2011 and May 2013, Plaintiffs paid
7 Defendants a total of \$43,134.00 for costs and consulting fees associated with the
8 production and purchase of the 2011 Vintage Wines, excluding the costs spent on
9 equipment such as wine barrels, and a total of \$62,719.91 for costs and consulting
10 fees associated with the production and purchase of the 2012 Vintage Wines,
11 excluding the costs spent on equipment. Plaintiffs paid these amounts in advance
12 of their receipt of the 2011 and 2012 Vintage Wines.
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16 3.4 Plaintiffs relied on Defendants' expertise, as winemakers and wine
17 merchants, to produce premium 2011 and 2012 Vintage Wines for Plaintiffs.
18 Plaintiffs intended to resell the wines as premium products, and Defendants were
19 aware of Plaintiffs' intention to do so.
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21 3.5 The costs charged by Defendants to Plaintiffs for the 2011 and 2012
22 Vintage Wines were consistent with the premium products Plaintiffs expected to
23 receive and were well above the amount Plaintiffs would have paid for average or
24 sub-standard wines. Defendants represented to Plaintiffs that the 2011 and 2012
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1 Vintage Wines would be premium products suitable for resale on the premium
2 wine market.
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4 3.6 In January 2013, Defendants provided samples to Plaintiffs of 2012
5 Viognier created by Defendants for Plaintiffs as part of the 2012 Vintage Wines.
6 When Plaintiffs expressed concern that the Viognier was too acidic and oxidized,
7 Defendants represented that they would make adjustments to the Viognier before
8 bottling it, and that it would be “a nice wine.” In other words, Defendants once
9 again guaranteed that the wine would be of the premium quality for which
10 Plaintiffs had bargained.
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13 3.7 On or about May 22, 2013, Plaintiffs and Defendants entered into an
14 agreement in which Defendants certified their full release to Plaintiffs of the 2011
15 and 2012 Vintage Wines (“the 2013 Certification”). In the 2013 Certification,
16 Defendants represented: “This wine has been maintained according to the contracts
17 dated August 2, 2012 and November 22, 2011.” A copy of the 2013 Certification
18 is attached to this Complaint as **Exhibit C**.
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21 3.8 After receiving the 2011 and 2012 Vintage Wines, Plaintiffs had
22 samples of the Wines tested by ETS Laboratories. The tests revealed the Wines
23 were of extremely poor quality. Volatile Acidity (“VA”) levels were too high,
24 rendering the Wines sub-standard pursuant to the requirements for standard wines
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1 set forth in 27 C.F.R. § 4.21. In addition, bacteria levels in the Wines created
2 sanitation problems. The high levels of bacteria are consistent with a failure to
3 properly maintain the wine in an appropriate manner, including winery sanitation,
4 topping of wine on a regulator basis, and generally maintaining the wine according
5 to industry standards.
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8 3.9 Plaintiffs are unable to resell the 2011 and 2012 Vintage Wines as the
9 premium products they contracted to receive. Many of the Wines are completely
10 unsalvageable and cannot be safely consumed or sold to third parties because of
11 the high levels of bacteria and because the VA levels exceed the maximum federal
12 limits. Others can only be sold as sub-standard wines or can only be sold if
13 blended with other, higher quality wines purchased at an additional cost to
14 Plaintiffs for that purpose. Even if Plaintiffs are able to blend the sub-standard
15 wines with other, higher quality wines, Plaintiffs will be left with a much larger
16 inventory than desired and will still be unable to resell the blended wines as the
17 premium wines for which Plaintiffs bargained.
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21 3.10 Of the seventeen barrels of 2011 Vintage Wines purchased by
22 Plaintiffs from Defendants, only one barrel is acceptable. Plaintiffs suffered
23 damages associated with the 2011 Vintage Wines in the amount of \$40,596.71,
24 representing amounts paid to Defendants in connection with the defective Wines.
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4.2 The 2011 Contract and 2012 Contract (collectively, “the Contracts”) constituted enforceable contracts between Plaintiffs and Defendants. Defendants were obliged to perform their obligations owed under the Contracts.

4.3 The conduct of Defendants alleged above constitutes a breach of their obligations under the Contracts.

4.4 As a direct and proximate result of Defendants' breach of the Contracts, Plaintiffs have suffered injuries and incurred damages in the amount of \$92,751.96.

Count II
Breach of the Implied Covenant of Good Faith and Fair Dealing

4.5 Plaintiffs re-aver and incorporate by reference all previous paragraphs.

4.6 The Contracts constituted enforceable contracts between Plaintiffs and Defendants.

4.7 A duty of good faith and fair dealing is implied into each and every contract in the State of Washington. The implied covenant of good faith and fair dealing requires that no party to a contract do anything that will injure the right of another party to receive the benefits of the contract, and that each contracting party will act in a manner that a reasonable person would regard as fair.

4.8 The conduct of Defendants alleged above constitutes a breach of their implied duty of good faith and fair dealing under the Contracts.

4.9 As a direct and proximate result of Defendants' breach of their duty of good faith and fair dealing under the Contracts, Plaintiffs have suffered injuries in the amount of \$92,751.96.

Count III

Breach of Express Warranties

4.10 Plaintiffs re-aver and incorporate by reference all previous paragraphs.

4.11 Defendants made affirmations of fact or promises to Plaintiffs related to the goods sold by Defendants to Plaintiffs; made descriptions of the goods sold by Defendants to Plaintiffs; and provided samples of the goods sold by Defendants to Plaintiffs. Those affirmations, promises, descriptions, and samples became part of the basis of the bargain between the parties and created express warranties that the goods would conform thereto.

4.12 The conduct of Defendants alleged above constitutes a breach of the express warranties made by Defendants to Plaintiffs.

4.13 As a direct and proximate result of Defendants' breach of the express warranties, Plaintiffs have suffered injuries in the amount of \$92,751.96.

Count IV
Breach of Implied Warranty of Merchantability

4.14 Plaintiffs re-aver and incorporate by reference all previous paragraphs.

4.15 Defendants are merchants with respect to the type of goods sold by Defendants to Plaintiffs. Under such circumstances, a warranty of merchantability is implied in each and every contract for the sale of goods in the State of Washington.

4.16 The implied warranty of merchantability requires that the goods sold must be at least such as pass without objection in the trade under the contract description; in the case of fungible goods, are of fair average quality within the description; are fit for the ordinary purpose for which such goods are used; run, within the variations permitted by agreement, of even kind, quality, and quantity within each unit and among all units involved; are adequately contained, packaged, and labeled as the agreement may require; and conform to the promises or affirmations of fact made on the containers or labels.

4.17 The conduct of Defendants alleged above constitutes a breach of the implied warranty of merchantability under the Contracts.

7 4.19 Plaintiffs re-aver and incorporate by reference all previous
8 paragraphs.

4.20 Defendants, at the time of contracting, had reason to know the particular purpose for which the goods Defendants sold to Plaintiffs were required and that Plaintiffs were relying on Defendants' skill or judgment to select or furnish suitable goods. Thus, a warranty that the goods were fit for that particular purpose was implied in the Contracts.

16 4.21 The conduct of Defendants alleged above constitutes a breach of the
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18 implied warranty of fitness for a particular purpose.

19 4.22 As a direct and proximate result of Defendants' breach of the implied
20 warranty of fitness for a particular purpose, Plaintiffs have suffered injuries in the
21 amount of \$92,751.96.
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Count VI
Violation of the Washington Consumer Protection Act

4.23 Plaintiffs re-aver and incorporate by reference all previous paragraphs.

4.24 At all times relevant to this litigation, Defendants were engaged in trade or commerce in the State of Washington.

4.25 The conduct of Defendants alleged above constitutes unfair or deceptive acts or practices in the course of trade or commerce in violation of the Washington Consumer Protection Act, RCW 19.86.020.

4.26 The conduct of Defendants alleged above impacts the public interest, because there is a likelihood that other consumers have been or will be injured by Defendants in a manner similar to Plaintiffs' injuries.

4.27 As a direct and proximate result of Defendants' unfair acts or practices in violation of the Washington Consumer Protection Act, Plaintiffs have suffered injuries in the amount of \$92,751.96.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for the following relief:

A. Judgment against Defendants in the amount of \$92,751.96 and interest accrued thereon;

1 B. Treble damages pursuant to the Washington Consumer Protection
2 Act, RCW 19.86.090;

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4 C. Judgment against Defendants for all costs and attorneys' fees
5 authorized by applicable law, including under RCW 19.86.090; and

6 D. For such other and further relief as the Court may deem just or
7 equitable.
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9 DATED this 16th day of July, 2013.

10 STOEL RIVES LLP

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